IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5634 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BIPINBHAI S PATEL

Versus

POST MASTER

Appearance:

1. Special Civil Application No. 5634 of 1990

MS ARCHANA AMIN for MR MK VAKHARIA for Petitioner No. 1-4

MR ASIM J PANDYA for Respondent No. 1-4,5,6-7-7

MS ARCHANA RAVAL, AGP for Respondent No. 5

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 30/06/2004

ORAL JUDGEMENT

The petitioners have approached this Court, as the postal authority has failed to issue National Savings

Certificate for different amounts deposited by the petitioners with respondents No.1 and 2.

2) It is a matter of regret that the present petitioners are required to approach this Court, even though the amount in question is invested with the postal authority, which is a Government agency. The petitioners were under the impression that it is a safe investment and they will get necessary National Saving Certificates, as the amount is already accepted by the authorised agent of the postal authority. It is the case of the petitioners that the Government of India has formulated a policy for attracting savings through their authorised agents and the said scheme is known as "Government of India National Saving Organisation"(sic). Under the scheme, the persons, who are desirous to deposit the amount with the Government, can do so under various schemes announced by the Government. In order to implement the said scheme, Collectors/Taluka Development Officers etc., are empowered to appoint institutional agents and such agents are authorised to collect the money from the people of the village on behalf of the post office/Government. Accordingly, the Collector, Mehsana and Taluka Development Officer, Vijapur, have appointed various agents for Ladol village, from where the present petitioners are hailing.

3) The petitioners have deposited various amount as per the particulars given in para 2.3 of the petition and the petitioners were given receipt for such deposits by the authorised agent, which are finding place at page 12 onwards in the compilation. In spite of such payments made in the year 1987, the petitioners were not given the National Saving Certificates. Therefore, the petitioners have approached this Court by filing the present petition.

4) This petition is pending before this Court for final hearing since 1990. In this petition, it is the say of the petitioners that the postal department should either repay the amount of Rs.18,000/- (with appropriate interest , in view of the long passage of time) or the postal department may be directed to issue National Saving Certificate.

5) Ms.Archana Amin, learned advocate for the petitioners, vehemently submitted that in good faith, the petitioners have invested Rs.18,000/- with the postal department. It is submitted by her that as so many years have passed, now the petitioners are not interested in getting certificates and the petitioners are interested

in getting the amount back, with appropriate interest. It is submitted by her that the amount in question was saved by the petitioners from their hard earned money. It is a matter of pity that for so many years, the petitioners could neither get the amount back with interest, nor have the certificates been given to them.

6) Mr.Pandya, learned advocate appearing for the postal authority, submitted that, in spite of his best efforts, he has not received any instructions from the postal authority. On behalf of the State Government, Taluka Development Officer, Vijapur, has filed an affidavit-in-reply, wherein it has been pointed out that under the scheme, agents are appointed to collect money from the people for the purpose of issuing National Savings Certificates. It is pointed out in the affidavit that in respect of Vijapur Rural area of Vijapur Taluka, Taluka Development Officer is authorised to appoint the agent. It is also further averred in the affidavit that on the appointment of the agent, the agent will have to work under the concerned authority of the post office and there will not be any contact with the appointing authority about the work of the said agent, and such agents are directly under the control of the postmaster concerned. It is also further stated in the affidavit that the transaction in respect of the collection of deposits obtained, receipt books, deposit of the amounts are directly under the control of concerned post office and the appointing authority is not at all in the picture.

7) In para 4 of the reply, it is further stated that some of the depositors have informed by their letter dated 20th April, 1989 and on receipt of such letter that an agent has misappropriated the amount of the depositors by not depositing the collected amount in the post office, the agency of the said agent was suspended. It is also stated that some of the petitioners have also filed criminal complaint against that agent. It is stated in the affidavit in reply that the Senior Superintendent of Post Office, Mehsana Division, Mehsana has informed the Collector that the said agent has collected Rs.93,000/- from different persons and not deposited the same with the post office.

8) Considering the aforesaid reply, it is not in dispute that the concerned agent, who was appointed by the Taluka Development Officer has misappropriated such amount of innocent depositors and with the result the persons, who have deposited such amount have neither received National Saving Certificates nor received any

amount back from the authority.

9) Considering the facts of the case, in my view, when the Government agency has appointed an agent, it is the duty of the authority to see that the person, who is appointed as an agent is a proper person and having upright character. In the instant case, without there being any fault on the part of the petitioners, the amount deposited by the petitioners have been completely misappropriated because of fraudulent act of the authorised agent of the postal authority. As a matter of fact, it was the duty of the authority to take appropriate proceedings against such agent to recover the amount of the depositors and as no steps are taken, the postal authority, on whose behalf the agent has collected the amount, is vicariously liable to make good the loss caused to the depositors, like the present petitioners. The postal authority has not even filed any reply opposing this petition. Not only that, even though sufficient time was given, the postal authority has not given any instruction to their advocate appearing in this matter.

10) The people invest money in such Government schemes with the hope that they will get back their money with interest. The postal authority is duty bound to return the money to the people. It may be possible that the postal authority is duped by their agent, but it cannot be ignored that the agent is appointed by the Government agency itself. It is the duty of the postal authority to take appropriate proceedings against the concerned agent to recover the amount. However, no such material is placed before this Court, showing that any action is taken against the agent. So far as civil liability is concerned, the postal authority, being the principal, cannot escape from the same and they are bound to repay the money, which their so-called agent has collected from the petitioners. It is, as such, not in dispute that, at the instance of the postal authority the State agency has appointed these agents and even the postal authority has approved the names of such agents selected by the State agency on behalf of the postal authority.

11) Under these circumstances, the prayer of the petitioners deserve to be granted by asking respondents No.1, 2, 6 and 7 to repay the amount, which the petitioners have invested under the National Saving Certificate Scheme, by making necessary payment to the authorised agent of the postal authority.

12) Ms.Archana Amin, learned advocate for the petitioners, pointed out that under the Scheme if the certificate was issued to the petitioners, then on the date of maturity, the petitioners would have got double the amount. As against that, the postal authority has not shown any grace by giving them even the principal amount. Under these circumstances, respondents No.1, 2, 6 and 7 are directed to calculate the amount appropriately, with interest. The postal authority is directed to repay the principal amount of Rs.18,000/- to the petitioners which they have deposited, with 16% interest from the date of such deposit till the realisation of the amount. The postal authority is directed to repay the principal amount with interest as indicated above, on or before 31st July, 2004, without any further delay.

13) Accordingly, this petition is allowed to the aforesaid extent. Rule is made absolute accordingly with no order as to costs.

(P.B.Majmudar,J.)

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